

TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. LICENSURE OF PRODUCERS, ADJUSTERS, BAIL BONDSMEN,
COMPANIES, PREPAID FUNERAL BENEFITS, AND VIATICAL AND LIFE
SETTLEMENTS PROVIDERS AND BROKERS

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 11. Viatical Settlements Regulation
- 365:25-11-1. Approval of viatical settlement contracts by Commissioner pursuant to 36 O.S. § ~~4045~~ 4055.5 [AMENDED]
- 365:25-11-2. ~~License requirements for viatical settlement providers~~ [REVOKED]
- 365:25-11-2.1 Definitions [NEW]
- 365:25-11-3. License requirements for viatical settlement brokers [AMENDED]
- 365:25-11-4. ~~Other requirements for brokers~~ [REVOKED]
- 365:25-11-4.1 Standards for evaluation of reasonable payments for terminally ill insureds [NEW]
- 365:25-11-5. Reporting requirement [AMENDED]
- 365:25-11-6. General rules [AMENDED]
- 365:25-11-7. Requirement to file advertising [NEW]
- 365:25-11-8. Prohibited practices [NEW]
- 365:25-11-9. Insurance company practices [NEW]
- 365:25-11-10. Transition period for existing licenses [NEW]
- 365:25-11-11. Effective date [NEW]
- Subchapter 13. Life Settlements Regulation [REVOKED]
- 365:25-13-1. Approval of life settlement contracts by commissioner pursuant to 36 O.S. § 4089 [REVOKED]
- 365:25-13-2. License requirements for life settlement providers [REVOKED]
- 365:25-13-3. License requirements for life settlement brokers [REVOKED]
- 365:25-13-4. Other requirements for brokers [REVOKED]
- 365:25-13-5. Reporting requirement [REVOKED]
- 365:25-13-6. General rules [REVOKED]
- 365:25-13-7. Advertising [REVOKED]
- Appendix U. Informational Brochure To Be Provided To A Prospective Viator at First Contact Pursuant To O.A.C. 365:25-11-6(a) [NEW]
- Appendix V. Verification of Coverage For Life Insurance Policies [NEW]
- Appendix W. Payouts For Insureds Who Are Terminally Ill [NEW]

AUTHORITY:

Insurance Commissioner, 36 O.S. §§ 307.1 and 4055.16

DATES:

Adoption:

September 15, 2008

Effective:

November 1, 2008

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the

Legislature

SUPERSEDED EMERGENCY RULES:

n/a

INCORPORATION BY REFERENCE:

n/a

FINDING OF EMERGENCY:

A compelling public interest requires emergency rules due to the necessity of providing by rule a means for compliance with *SB 1980 and SB 565* that enacted the new Viatical Settlements Act of 2008, 36 O.S. § 4055.1, et seq., and repealed the Viatical Settlements Act, 36 O.S. § 4041, and the Life Settlements Act, 36 O.S. § 4085, said bills being effective on Nov. 1, 2008.

ANALYSIS:

The proposed amendments to the Viatical Settlements Regulation and the proposed revocation of the Life Settlements Regulation implement the Viatical Settlements Act of 2008, 36 O.S. § 4055.1, et seq., which is effective on November 1, 2008, pursuant to *SB 1980 and SB 565*. Viatical and Life Settlements are now addressed in one Act, the Viatical Settlements Act of 2008, and the Viatical Settlements Regulation as proposed herein. The amendments to the regulation are taken primarily from the National Association of Insurance Commissioners' Viatical Settlements Model Regulation.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF NOVEMBER 1, 2008:

SUBCHAPTER 11. VIATICAL SETTLEMENTS REGULATION

365:25-11-1. Approval of viatical settlement contracts by Commissioner pursuant to 36 O.S. § ~~4045~~ 4055.5

Viatical settlement contracts filings pursuant to 36 O.S. § ~~4045~~ 4055.5 shall be filed with the Rate and Form Compliance ~~Life and Health~~ Division of the Insurance Department.

365:25-11-2. ~~License requirements for viatical settlement providers~~ [REVOKED]

~~A viatical settlement provider, as defined in 36 O.S. § 4042 of the Oklahoma Viatical Settlement Act, shall not enter into or solicit a viatical settlement contract without first obtaining a license from the Commissioner.~~

~~(1) — The Commissioner may ask for such additional information as is necessary to determine whether the applicant complies with the requirements of Section 4043 of Title 36 of the Oklahoma Viatical Settlement Act.~~

~~(2) — Viatical settlement providers shall acquire and maintain a surety in the amount of \$50,000.00. A copy of the executed bond shall be filed with the Commissioner at the time of application for a license.~~

365:25-11-2.1. Definitions

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Viatical Settlements Act of 2008.

"Insured" means the person covered under the policy being considered for viatication.

"Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data.

"Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.

"Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

365:25-11-3. License requirements for viatical settlement brokers

~~A viatical settlement broker shall not solicit a viatical settlement contract without first obtaining a license from the Commissioner.~~

~~(1) — A viatical settlement broker shall make application on a form required by the Commissioner.~~

~~(2) — The application shall be accompanied by a fee of \$500.00. The license may be renewed yearly by payment of a fee of \$500.00. Failure to pay the renewal fee within the time prescribed shall result in automatic revocation of the license.~~

~~(3) — The Commissioner shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement broker if the Commissioner finds that:~~

~~(A) — There was any misrepresentation in the application for a license;~~

~~(B) — The broker has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or any misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy or incompetent;~~

~~(C) — The licensee has placed or attempted to place a viatical settlement with a viatical settlement provider not licensed in this state; or~~

~~(D) — The licensee has violated any of the provisions of the Viatical Settlement Act, 36 O.S. § 4041, et seq., or this regulation.~~

~~(4) — A person shall be deemed to meet the licensing requirements of this section and of the Viatical Settlement Act, 36 O.S. § 4041, et seq., and shall be permitted to operate as a viatical settlement broker, as defined in Section 4042(2) of the Viatical Settlement Act, if that person is licensed as a resident or nonresident insurance producer with a life insurance line of authority pursuant to the Oklahoma Producer Licensing Act, 36 O.S. § 1435.1, et seq., for at least one year. Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the producer shall notify the Insurance Department that he or she is acting as a viatical settlement broker on a form or in a manner that may be prescribed by the Insurance Department, and shall pay the fee as set out in this section. The notification shall include an acknowledgment by the producer that he or she will operate as a viatical settlement broker in accordance with the Viatical Settlement Act and this regulation.~~

(a) In addition to the information required in Section 4055.3 of Title 36 of this state's statutes, the Commissioner may ask for other information necessary to determine whether the applicant for a license as a viatical settlement provider or viatical settlement broker complies with the requirements of that section.

(b) Applicants must complete an application form specified by the Commissioner for the license they seek.

(c) The application shall be accompanied by a fee of \$500.00. The license may be renewed yearly by payment of \$500.00 and a current copy of a letter of good standing obtained from the filing officer of the applicant's state of domicile. If a viatical settlement provider or viatical settlement broker fails to pay the renewal fee within the time prescribed, or a viatical settlement provider or broker fails to submit the reports required in O.A.C. 365:25-11-5, the nonpayment or failure to submit the required reports shall, after notice and opportunity for hearing, result in lapse of the license. If a viatical settlement provider has, at the time of renewal, viatical settlements where the insured has not died, it shall do one of the following:

(1) Renew or maintain its current license status until the earlier of the following events:

(A) The date the viatical settlement provider properly assigns, sells or otherwise transfers the viatical settlements where the insured has not died; or

(B) The date that the last insured covered by viatical settlement transaction has died.

(2) Appoint, in writing, either the viatical settlement provider that entered into the viatical settlement, the broker who received commissions from the viatical settlement, if applicable, or any other viatical settlement provider or broker licensed in this state to make all inquiries to the viator, or the viator's designee, regarding health status of the insured or any other matters.

(d) An individual licensed as a viatical settlement broker or authorized to act under a license issued to a licensed entity as a viatical settlement broker shall complete 4 hours of department-approved continuing education during each renewal period.

(1) The required continuing education hours shall include a minimum of:

(A) Three (3) hours in life insurance and viaticals; and

(B) One (1) hours in ethics.

(2) A life insurance producer who is operating as a viatical settlement broker pursuant to Section 4055.3(A)(2) of the Act shall not be subject to the continuing education requirements of this subsection (d).

(3) The license of an individual who fails to comply with this continuing education requirement shall terminate at the end of its current term and may not be renewed until the continuing education requirement for the prior license term has been satisfied.

(e) A viatical settlement broker or viatical settlement provider shall file with the Commissioner, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than Fifty Thousand Dollars (\$ 50,000.00).

(1) This evidence shall be in the form of an errors and omissions insurance policy issued in accordance with Oklahoma law by an insurer authorized to do business in Oklahoma, a surety executed and issued by an insurer authorized to issue surety bonds in Oklahoma, or a deposit of cash, certificates of deposits, or securities, or any combination of these evidences of financial responsibility. The policy, bond, deposit or combination thereof shall not be terminated without thirty (30) days prior written notice to the licensee and the commissioner.

(2) The Commissioner may also accept as evidence of financial responsibility proof that a financial instrument in accordance with the requirements in Paragraph (1) has been filed with the Commissioner of any other state where the viatical settlement broker or viatical settlement provider is licensed as a viatical settlement broker or viatical settlement provider.

(f) A person shall be deemed to meet the licensing requirements of this section and Section

4055.3 of the Act and shall be permitted to operate as a viatical settlement broker, as defined in Section 4055.2 of Title 36 of the Act, if that person is licensed as a resident or nonresident insurance producer with a life insurance line of authority pursuant to the Oklahoma Producer Licensing Act, 36 O.S. § 1435.1, et seq., for at least one year. Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the producer shall notify the department that he or she is acting as a viatical settlement broker on a form or in a manner that may be prescribed by the department, and shall pay any applicable fees to be determined by the department. The notification shall include an acknowledgment by the producer that he or she will operate as a viatical settlement broker in accordance with the Act and this regulation.

365:25-11-4. Other requirements for brokers [REVOKED]

~~(a) — Viatical settlement brokers shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.~~

~~(b) — Broker shall disclose to the viator any contractual arrangement or agreement for compensation that may exist between the viatical settlement provider and the broker.~~

365:10-11-4.1. Standards for evaluation of reasonable payments for terminally ill insureds

In order to assure that viators receive a reasonable return for viaticating an insurance policy, the return for viaticating a policy shall be no less than the payouts set out in Appendix W of this chapter for insureds who are terminally ill.

365:25-11-5. Reporting requirement

(a) On or before March 1 of each calendar year, each viatical settlement provider licensed in this state shall ~~make a report containing the following information~~ submit the following information related to the licensee's activities for the previous calendar year:

- (1) For each policy viaticated:
 - ~~(A) — Date viatical settlement entered into;~~
 - ~~(B) — Life expectancy of viator at time of contract;~~
 - ~~(C) — Face amount of policy; and~~
 - ~~(D) — Amount paid by the viatical settlement provider to viaticate the policy;~~A report of the viatical settlement transactions in all states and territories, which shall be submitted on a form provided by the Insurance Commissioner and referred to as Form VSP 001;
- (2) For each deceased viator:
 - ~~(A) — Date viatical settlement entered into;~~
 - ~~(B) — Life expectancy of viator at time of contract;~~
 - ~~(C) — Face amount of policy;~~
 - ~~(D) — Amount paid by the viatical settlement provider to viaticate the policy;~~
 - ~~(E) — Date of death of viator; and~~
 - ~~(F) — Total insurance premiums paid by viatical settlement provider to maintain the policy in force.~~A report of the viatical settlement transactions related to Oklahoma viators, which shall be submitted on a form provided by the Insurance Commissioner and referred to as Form VSP 002;
- (3) Breakdown of applications received, accepted and rejected, by disease category;A report of the individual mortality of Oklahoma insureds, which shall be submitted on a form

provided by the Insurance Commissioner and referred to as Form VSP 003; and

(4) Breakdown of policies viaticated by issuer and policy type; A certification of the information contained in the reports, which shall be submitted on a form provided by the Insurance Commissioner and referred to as Form VSPB 001 and shall be filed with the reports.

(5) Number of secondary market as compared to primary market transactions;

(6) Portfolio size; and

(7) Amount of outside borrowings.

(b) On or before March 1 of each calendar year, a licensed viatical settlement broker shall submit the following related to the licensee's activities for the previous calendar year:

(1) A report of the viatical settlement transactions in all states and territories, which shall be submitted on a form provided by the Insurance Commissioner and referred to as Form VSB 001; and

(2) A report of the viatical settlement transactions related to Oklahoma viators, which shall be submitted on a form provided by the Insurance Commissioner and referred to as Form VSB 002;

(3) A certification of the information contained in the reports, which shall be submitted on a form provided by the Insurance Commissioner and referred to as Form VSPB 001 and shall be filed with the reports.

365:25-11-6. General rules

(a) Viatical settlement brokers, at the time of their first contact with a prospective viator, shall provide an informational brochure. Such brochure shall use the language and format set out in Appendix U.

(b) With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement agreement, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a designation, to the estate of the viator.

~~(b)(c)~~ Payment of the proceeds of a viatical settlement pursuant to ~~36 O.S. § 4049(D)~~ 4055.9(D) of the ~~Oklahoma Viatical Settlement~~ Act shall be by means of wire transfer to ~~the~~ an account ~~of~~ designated by the viator or by certified check or cashier's check.

~~(e)(d)~~ Payment of the proceeds pursuant to a viatical settlement shall be made in a lump sum except where the viatical settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds not disclosed or described in the viatical settlement contract by the viatical settlement provider or escrow agent is not permissible without written consent of the viator.

~~(d) — Installment payments shall not be made unless the viatical settlement company has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank. The amount used to purchase an annuity shall not be less than the viatical settlement proceeds paid in a lump sum.~~

(e) A viatical settlement provider or broker shall not discriminate in the making or soliciting of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with dependents and without.

(f) A viatical settlement provider or broker shall not pay or offer to pay any finder's fee, commission or other compensation to any viator's insured's physician, attorney, accountant or other

person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a viatical settlement broker, with respect to the viatical settlement.

~~(g) Contacts for the purpose of determining the health status of the viator by the viatical settlement provider or broker after the viatical settlement has occurred shall be limited to once every three (3) months for viators with a life expectancy of more than one year, and to no more than one per month for viators with a life expectancy of one year or less. The provider or broker shall provide a written explanation of the procedure for these contacts at the time the viatical settlement contract is entered into. A viatical settlement provider shall not knowingly solicit purchasers who have treated or have been asked to treat the illness of the insured whose coverage would be the subject of the investment.~~

~~(h) Viatical settlement providers and brokers shall not solicit investors who could influence the treatment of the illness of the viators whose coverage would be the subject of the investment. If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following provisions:~~

~~(1) A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;~~

~~(2) A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either:~~

~~(A) Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or~~

~~(B) Send a copy of the instrument sent from the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy; and~~

~~(3) A provision that apportions the premiums to be paid by the viatical settlement provider and the viator, provided that the contract provides premium payment terms and nonforfeiture options no less favorable, on a proportional basis, than those included in the policy.~~

~~(i) Advertising standards:~~

~~(1) Advertising should be truthful and not misleading by fact or implication.~~

~~(2) If the advertiser mentions the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.~~

~~(3) If the advertising mentions the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the past six (6) months. In all cases where the insured is a minor child, disclosures to and permission of a parent or legal guardian satisfy the requirements of the Act and this regulation.~~

365:25-11-7. Requirement to file advertising

A viatical settlement licensee shall provide a copy of any advertisement intended for use in this state whether through written, radio, or television medium to the Commissioner for review and approval before the advertisement is disseminated within this state.

365:25-11-8. Prohibited practices

(a) A viatical settlement provider or viatical settlement broker shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider or viatical settlement broker is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five (5) business days after receiving notice of the subpoena.

(b) A viatical settlement provider shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, in the same viatical settlement.

(c) A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

365-25-11-9. Insurance company practices

(a) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within thirty (30) calendar days of the date a request is received, subject to the following conditions:

(1) A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request;

(2) In the case of an individual policy or group insurance coverage where details with respect to the certificate holder's coverage are maintained by the insurer, submission of a form substantially similar to Appendix V, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form.

(b) Nothing in this section shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request.

(c) A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this section in excess of any usual and customary charges to contract holders, certificate holders or insureds for similar services.

(d) The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policy owner or certificate holder and, where the policy owner or certificate owner is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

(e) A life insurance company shall not require the viator or insured to sign any request for change in a policy or a group certificate from a viatical settlement provider that is the owner or assignee of the insured's insurance coverage, unless the viator or insured has ownership, assignment or irrevocable beneficiary rights under the policy. In such a situation, the viatical settlement provider shall provide timely notice to the insured that a settlement transaction on the policy has occurred. Timely notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate.

365-25-11-10. Transition period for existing licenses

(a) A viatical settlement provider, a viatical settlement broker, a life settlement provider, or a life

settlement broker lawfully transacting business in this state pursuant to Sections 4045 and/or 4085 of Title 36 of the laws of this state on the effective date of this regulation may continue to transact such business if said provider's or broker's license was active prior to November 1, 2008, and the licensee submits a complete application as specified in O.A.C. 365-25-11-3 for a license pursuant to the Viatical Settlements Act of 2008, 36 O.S. § 1455.1, et seq., on or before December 31, 2008.

(b) If an existing licensee's application pursuant to this subsection is approved, the new license will replace the prior license issued by the Commissioner pursuant to Sections 4045 and/or 4085 and will remain in force for the balance of the term of the prior license.

(c) If an existing licensee's application for licensure pursuant to the Act and this section is denied, the prior license of the licensee issued pursuant to Sections 4045 and/or 4085 of Title 36 is no longer valid and shall be immediately surrendered to the Commissioner.

365:25-11-11. Effective date

This regulation is effective November 1, 2008.

SUBCHAPTER 13. LIFE SETTLEMENTS REGULATION [REVOKED]

365:25-13-1. Approval of life settlement contracts by commissioner pursuant to 36 O.S. § 4089 [REVOKED]

~~Life settlement contracts filings pursuant to 36 O.S. § 4089 shall be filed with the Life and Health Division of the Insurance Department.~~

365:25-13-2. License requirements for life settlement providers [REVOKED]

~~A life settlement provider, as defined in 36 O.S. § 4086 of the Oklahoma Life Settlement Act, shall not enter into or solicit a life settlement contract without first obtaining a license from the Commissioner.~~

~~(1) — The Commissioner may ask for such additional information as is necessary to determine whether the applicant complies with the requirements of Section 4087 of Title 36 of the Oklahoma Life Settlement Act.~~

~~(2) — Life settlement providers shall acquire and maintain a surety in the amount of \$100,000.00. A copy of the executed bond shall be filed with the Commissioner at the time of application for a license.~~

365:25-13-3. License requirements for life settlement brokers [REVOKED]

~~A life settlement broker shall not solicit a life settlement contract without first obtaining a license from the Commissioner.~~

~~(1) — A life settlement broker shall make application on a form required by the Commissioner.~~

~~(2) — The application shall be accompanied by a fee of \$500.00. The license may be renewed yearly by payment of a fee of \$500.00. Failure to pay the renewal fee within the time prescribed shall result in automatic revocation of the license.~~

~~(3) — The Commissioner shall have the right to suspend, revoke or refuse to renew the license of any life settlement broker if the Commissioner finds that:~~

~~(A) — There was any misrepresentation in the application for a license;~~

- ~~(B) — The broker has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or any misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy or incompetent;~~
- ~~(C) — The licensee has placed or attempted to place a life settlement with a life settlement provider not licensed in this state; or~~
- ~~(D) — The licensee has violated any of the provisions of the Life Settlement Act, 36 O.S. § 4085, et seq., or this regulation.~~

~~(4) A person shall be deemed to meet the licensing requirements of this section and of the Life Settlement Act, 36 O.S. § 4085, et seq., and shall be permitted to operate as a life settlement broker, as defined in Section 4086(3) of the Life Settlement Act, if that person is licensed as a resident or nonresident insurance producer with a life insurance line of authority pursuant to the Oklahoma Producer Licensing Act, 36 O.S. § 1435.1, et seq., for at least one year. Not later than thirty (30) days from the first day of operating as a life settlement broker, the producer shall notify the Insurance Department that he or she is acting as a life settlement broker on a form or in a manner that may be prescribed by the Insurance Department, and shall pay the fee as set out in this section. The notification shall include an acknowledgment by the producer that he or she will operate as a life settlement broker in accordance with the Life Settlement Act and this regulation.~~

365:25-13-4. Other requirements for brokers [REVOKED]

- ~~(a) — Life settlement brokers shall not, without the written agreement of the owner of a life insurance policy obtained prior to performing any services in connection with a life settlement, seek or obtain any compensation from the owner of a life insurance policy.~~
- ~~(b) — Broker shall disclose to the owner any contractual arrangement or agreement for compensation that may exist between the life settlement provider and the broker.~~

365:25-13-5. Reporting requirement [REVOKED]

~~On March 1 of each calendar year, each life settlement provider licensed in this state shall file with the Life and Health Division of the Oklahoma Insurance Department a report containing the following information for the previous calendar year:~~

- ~~(1) — For each policy purchased:

 - ~~(A) — Date life settlement entered into;~~
 - ~~(B) — Life expectancy of insured at time of contract;~~
 - ~~(C) — Face amount of policy; and~~
 - ~~(D) — Amount paid by the life settlement provider to purchase the policy;~~~~
- ~~(2) — For each deceased insured:

 - ~~(A) — Date life settlement entered into;~~
 - ~~(B) — Life expectancy of insured at time of contract;~~
 - ~~(C) — Face amount of policy;~~
 - ~~(D) — Amount paid by the life settlement provider to purchase the policy;~~
 - ~~(E) — Date of death of insured; and~~
 - ~~(F) — Total insurance premiums paid by life settlement provider to maintain the policy in force.~~~~
- ~~(3) — Breakdown of applications received, accepted and rejected, by age category;~~
- ~~(4) — Breakdown of policies involved in life settlement transactions by issuer and policy~~

type;

(5) — Number of secondary market as compared to primary market transactions;

(6) — Portfolio size; and

(7) — Amount of outside borrowings.

365:25-13-6. General rules [REVOKED]

(a) — ~~With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the owner prior to entering into the life settlement agreement, or to such other beneficiary, other than the life settlement provider, as the owner may thereafter designate, or in the absence of a designation, to the estate of the owner.~~

(b) — ~~Payment of the proceeds of a life settlement pursuant to 36 O.S. § 4093(D) of the Oklahoma Life Settlement Act shall be by means of wire transfer to the account of the owner or by certified check.~~

(c) — ~~Payment of the proceeds pursuant to a life settlement shall be made in a lump sum. Retention of a portion of the proceeds by the life settlement provider or escrow agent is not permissible.~~

(d) — ~~Installment payments shall not be made unless the life settlement provider has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank. The amount used to purchase an annuity shall not be less than the life settlement proceeds paid in a lump sum.~~

(e) — ~~A life settlement provider or broker shall not discriminate in the making of life settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with dependents and without.~~

(f) — ~~A life settlement provider or broker shall not pay or offer to pay any finder's fee, commission or other compensation to any owner or insured's physician, attorney, accountant or other person providing medical, legal or financial planning services to the owner, or to any other person acting as an agent of the owner with respect to the life settlement.~~

(g) — ~~Contacts for the purpose of determining the health status of the insured by the life settlement provider or broker after the life settlement has occurred shall be limited to once every three (3) months for insureds with a life expectancy of more than one year, and to no more than one per month for insureds with a life expectancy of one year or less. The provider or broker shall provide a written explanation of the procedure for these contacts at the time the life settlement contract is entered into.~~

(h) — ~~Life settlement providers and brokers shall not solicit investors who could influence the treatment of the illness of the insured whose coverage would be the subject of the investment.~~

365:25-13-7. Advertising [REVOKED]

(a) — ~~This section shall apply to any advertising of life settlement contracts, or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.~~

(b) — ~~Every life settlement licensee shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the life settlement licensee, as well as the individual who~~

created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the life settlement licensee.

(c) — Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a life settlement contract (or life settlement purchase agreement, product or service) shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(d) — Certain life settlement advertisements are deemed false and misleading on their face and are prohibited. False and misleading life settlement advertisements include, but are not limited to, the following representations:

- (1) "Guaranteed," "fully secured," "100 percent secured," "fully insured," "secure," "safe," "backed by rated insurance companies," "backed by federal law," "backed by state law," or "state guaranty funds," or similar representations;
- (2) "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;
- (3) "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other retirement account rollovers," "tax deferred," or similar representations;
- (4) Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;
- (5) "No sales charges or fees" or similar representations;
- (6) "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;
- (7) Purported favorable representations or testimonials about the benefits of life settlement contracts or life settlement purchase agreements as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of printed and electronic media.

(e) — The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(1) — An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the life settlement contract or purchase agreement offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the parties to the sale or purchase agreement are not satisfied includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

(2) — An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

(3) — An advertisement shall not represent that premium payments will not be required

to be paid on the life insurance policy that is the subject of a life settlement contract or life settlement purchase agreement in order to maintain that policy, unless that is the fact.

(4) — An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(5) — The words "free," "no Cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(6) — Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the life settlement contract or life settlement purchase agreement, product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving any person or prospective purchasers as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the life settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(A) — If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the life settlement provider or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(B) An advertisement shall not state or imply that a life settlement contract or life settlement purchase agreement, benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(C) When an endorsement refers to benefits received under a life settlement contract or life settlement purchase agreement, all pertinent information shall be retained for a period of five (5) years after its use.

(f) — An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(g) — An advertisement shall not disparage insurers, life settlement providers, life settlement brokers, life settlement investment agents, insurance producers, policies, services or methods of marketing.

(h) — The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement contract or life settlement purchase agreements, products or services, and if any specific life settlement contract or life settlement purchase agreement is advertised, the life settlement contract or life settlement purchase agreement shall be identified by form number. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

(i) — An advertisement shall not use a trade name, group designation, name of the parent

company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee, or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract or life settlement purchase agreement.

(j) — An advertisement shall not use any combination of words, symbols or physical material that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective persons or purchasers into believing that the solicitation is in some manner connected with a government program or agency.

(k) — An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the life settlement provider, life settlement broker or life settlement investment agent is licensed.

(l) — An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its life settlement contracts or life settlement purchase agreement forms are recommended or endorsed by any government entity.

(m) — The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(n) — An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

- (1) Any life settlement licensee or its business practices or methods of operations;
- (2) The merits, desirability or advisability of any life settlement contract or life settlement purchase agreement;
- (3) Any life settlement contract or life settlement purchase agreement; or
- (4) Any life insurance policy or life insurance company.

(o) — If the advertising emphasizes the dollar amounts available to persons involved in life settlement contracts, the advertising shall disclose the average purchase price as a percent of face value obtained by persons involved in life settlement contracts during the past six (6) months.

(p) — If the advertiser emphasizes the speed with which the life settlement transaction will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the person involved in the life settlement transaction.

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Viatical Settlements

Buying Viaticals as Investments

Questions to Ask

- Is the principal and return on my investment guaranteed?
- How is the return on my investment calculated?
- When is the principal and return on my investment paid?
- What fees or other cost am I required to pay?
- Will I ever be required to pay the premiums on the insurance policy?
- What happens if the insured outlives me?

Your state insurance department and the National Association of Insurance Commissioners want you to have the facts about viatical settlements before you invest. This pamphlet provides some of that information, but it's only a starting point. Consult your own professional financial advisor, attorney, or accountant to help you decide if this is the most suitable investment for you.

Always Check with Your State

- Your state may have a list of viatical settlement providers and brokers licensed to do business in the state. Make sure yours are on the list.
- Ask for a copy of regulations related to viatical settlements for your financial advisors to review.

Selling a Life Insurance Policy?

If you're interested in selling your life insurance policy, contact your state insurance department *before* you make a decision.

OKLAHOMA INSURANCE DEPARTMENT

2401 NW 23rd Street, Suite 28
Toll Free Phone: 800-522-0071
Phone: 405-521-2828 Fax: 405-522-3642
Email: feedback@oid.ok.gov
Website: www.ok.gov/oid

Before You Decide

Viatical settlements allow life insurance policyholders to sell their policies to investors for an immediate cash benefit. In return, the buyer of the viatical settlement becomes the new owner of the life insurance policy, pays future premiums and collects the death benefit when the insured dies.

At one time, most viatical settlements were from people with a life-threatening illness. Now, individuals who are not facing a health crisis may sell their life insurance policies to get cash.

If you are asked to put your money into this type of investment, it is critical that you understand the risks involved, know how your investment will be used and know what the likely return will be. Contact your state insurance department if you need more information.

Be an Informed Investor

- A viatical settlement is not a liquid investment. You can't "cash in" your principal if you change your mind. There is no return on your investment until the insured dies and the death benefit is paid.
- There is no guaranteed annual rate of return. The rate of return depends on when the insured dies and no one can perfectly predict a person's life expectancy. You should find out the life expectancy of the insured and how that determination was made. Remember that individuals who sell their policies in a viatical settlement may not have a life-threatening illness. They may be selling the policy because they can't afford it or no longer need it.
- You are investing in a life insurance policy and premiums must be paid until the insured dies. Find out who is responsible for paying the premiums. Could *you* ever be responsible for paying the premiums? For example, if the insured lives longer than expected, will you have to pay the premiums? If so, this could decrease your rate of return.

Watch for These Special Risks

- **Group Insurance:** The main risk under an employer provided group policy is that the employer or the insurance company could terminate the group policy. If that happens, the insured may have the right to change to an individual policy but the premium will usually be higher. You will want to ask if there are any special rules about changing from the group policy and who will be responsible for paying any additional premiums.
- **Incontestable Clause:** Insurance companies may refuse to pay death claims for policies less than two years old. In the first two years, the death benefit could be denied for various reasons including suicide or false medical information.
- **Term Insurance:** Term life insurance is issued for a certain number of years. An insurance company won't pay the death benefit if the insured outlives the term of the policy. Find out if it is possible to change the policy to a permanent life insurance policy, such as whole life.
- **Retirement Funds:** If you will be using money from retirement funds such as a 401(k), IRA, Keogh, or another qualified retirement plan, check with your tax advisor first to make sure you won't lose any tax advantages.

Questions to Ask

- Do I still need life insurance protection?
- If I sell my policy, how do they decide how much cash I get?
- Is this an employer or other group policy? If so, do I need permission to sell it?
- If I sell my policy, who will be the legal owner?
- Do I need the advice of a tax or estate planning advisor before I decide to sell my policy?
- Who will have specific information about me, my family or my health status?
- After I sell my policy, can it be resold by the buyer?

Your state insurance department may have a list of viatical settlement providers and brokers that are licensed to do business in the state. Contact them to make sure yours are on the list.

Always Check with Your State

Contact your state insurance or securities departments to learn about the issues and risks of viatical settlements *if*:

- you're considering selling your life insurance policy;
- you're asked to sell your life insurance policy *and* your health hasn't changed since you bought the policy;
- you're asked to buy a new life insurance policy *and* immediately sell it for cash.

Buying a Life Insurance Policy?

If you're interested in buying a life insurance policy as an investment, contact your state insurance department *before* you make a decision.

**OKLAHOMA INSURANCE
DEPARTMENT**

2401 NW 23rd Street, Suite 28
Toll Free Phone: 800-522-0071
Phone: 405-521-2828 Fax: 405-522-3642
Email: feedback@oid.ok.gov
Website: www.ok.gov/oid



Selling Your Life Insurance Policy

Understanding Viatical Settlements

What is a Viatical Settlement?

A viatical settlement is the sale of a life insurance policy to a third party. The owner (*viator*) of the life insurance policy sells the policy for an immediate cash benefit.

The buyer (the viatical settlement provider) becomes the new owner of the life insurance policy, pays future premiums, and collects the death benefit when the insured dies.

At one time, most viatical settlements were from people with a life-threatening illness. Now, individuals who are not facing a health crisis may sell their life insurance policies to get cash.

Your state insurance department and the National Association of Insurance Commissioners want you to have the facts before you sell your life insurance policy. This brochure provides some of that information, but it is only a starting point. Consult your own professional financial advisor, attorney, or accountant to help you decide if this is the most suitable arrangement for you.

Consider Your Options

If you're selling your policy to get cash to pay expenses, check all of your options. You may find a way to get more cash from your life insurance policy.

1. Ask your insurance agent or company if you have any cash value in your life insurance policy. You may be able to use some of the cash value to meet your immediate needs and keep your policy in force for your beneficiaries. You may also be able to use the cash value as security for a loan from a financial institution.
2. Find out if your life insurance policy has an *accelerated death benefit*. An accelerated death benefit typically pays some of the policy's death benefit before the insured dies. It may be a way for you to get cash from a policy without selling it to a third party.

Consumer tips

- Comparison shop. Get quotes from several companies to make sure you have a competitive offer.
- Find out the tax implications. Not all proceeds received from the sale of your life insurance policy are tax free.
- It's important to know that any of your creditors could claim your cash settlement.
- Find out if you will lose any public assistance benefits such as food stamps or Medicaid if you get a cash settlement.
- The buyer of your policy can periodically ask you about your health status. The buyer is required to give you a privacy notice outlining who will get this personal information. Be sure to read it.
- Check all application forms for accuracy, especially your medical history. All questions must be answered truthfully and completely.
- Make sure the viatical settlement provider agrees to put your settlement proceeds into an independent escrow account to protect your funds during the transfer.
- Find out if you have the right to change your mind about the settlement AFTER you get the money. If so, how many days do you have to reconsider and return the money?

APPENDIX V. VERIFICATION OF COVERAGE FOR LIFE INSURANCE POLICIES [NEW]

VERIFICATION OF COVERAGE FOR LIFE INSURANCE POLICIES

SUBMITTED TO: _____ **NAIC #** _____
Name of Insurance Company

POLICY NUMBER: _____

SUBMITTED FROM: _____
Name of Viatical Settlement Broker/Provider

ADDRESS: _____

TELEPHONE NUMBER: _____

CONTACT: _____ **TITLE:** _____

IF INFORMATION IS CORRECT, INSURER REPRESENTATIVE MAY PLACE A CHECKMARK IN THE BOX. OTHERWISE PROVIDE CORRECTED INFORMATION THROUGHOUT THIS FORM. AN ASTERISK INDICATES INFORMATION THE VIATICAL SETTLEMENT PROVIDER/BROKER MUST PROVIDE.

POLICY OWNER'S AND INSURED'S INFORMATION

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Owner's name	*	
Address	*	
City, state, ZIP code	*	
Tax ID or social security number	*	
Insured's name	*	
Insured's date of birth	*	
Second insured's name (if applicable)	*	
Second insured's date of birth (if applicable)	*	

I hereby consent by my signature below to release of information requested by this form by the insurance company to the viatical settlement broker/provider.

Signature of policy owner

Date signed

IS THE POLICY IN FORCE? _____ **YES** _____ **NO**
*IF NO, SIGN, AND DATE ON PAGE 4 AND RETURN TO THE VIATICAL SETTLEMENT
 BROKER OR PROVIDER THAT SUBMITTED THE VERIFICATION OF COVERAGE.*

POLICY TYPE, RIDERS & OPTIONS:

* _____ **TERM** _____ **WHOLE LIFE** _____ **UNIVERSAL LIFE** _____ **VARIABLE LIFE**

If a question is not applicable to the type of policy, write N/A in the column.

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Original issue date	*	
Maturity date of policy		
State of issue	*	
Does the policy have an irrevocable beneficiary?	*	
Is the policy currently assigned?	*	
Was the policy ever converted or reinstated?		
Is the policy in the contestability period?	*	
Is the policy in the suicide period?	*	
Please list all riders and indicate if any are in the contestable or suicide period.	*	

POLICY VALUES

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Policy values as of (insert date)		
Current face amount of policy	*	
Amount of accumulated dividends		
Current face amount of riders		
Amount of any outstanding loans	*	
Amount of outstanding interest on policy loans		
Current net death benefit	*	
Current account value	*	
Current cash surrender value	*	
Is policy participating?	*	
If yes, what is the current dividend option?		

PREMIUM INFORMATION

	This column to be completed by Viatical Settlement Broker/Provider	This column to be used by Insurance Company
Current payment mode	*	
Current modal premium	*	
Date last premium paid	*	
Date next premium due	*	
Current monthly cost of insurance as of (insert date)		
Date of last cost of insurance deduction		

TO BE COMPLETED BY VIATICAL SETTLEMENT BROKER/PROVIDER

The information submitted for verification by the viatical settlement broker/provider is correct and accurate to the best of my knowledge and has been obtained through the policy owner and/or insured.

Signature

Printed Name

TO BE COMPLETED BY INSURANCE COMPANY

The information provided by verification by the insurance company is correct and accurate to the best of my knowledge as of _____ (date).

Insurance company: _____ NAIC # _____

Printed name: _____ Title: _____

Telephone number: _____ Fax number: _____

Signature: _____

Please provide information about where the forms listed below should be submitted for processing.

Name: _____ Title: _____

Company Name: _____

Mailing Address: _____

City, State, ZIP: _____

Overnight Address: _____

City, State, ZIP: _____

Telephone number: _____ Fax number: _____

FORMS REQUEST

Please provide the forms checked below:

- Absolute Assignment/Change of Ownership/Viatical Assignment
- Change of Beneficiary
- Release of Irrevocable Beneficiary (if applicable)
- Waiver of Premium Claim Form
- Disability Waiver of Premium Approval Letter
- Release of Assignment
- Change of Death Benefit Option Form (if UL)
- Allocation Change Form (if Variable)
- Annual Report
- Current In Force Illustration

APPENDIX W. PAYOUTS FOR INSUREDS WHO ARE TERMINALLY ILL [NEW]

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 24 months	60%